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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,320	07/28/2003	Robert A. Luehrsen	005345.00007	4433
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BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606			EXAMINER DEVORE, PETER T	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,320

Applicant(s)

LUEHRSEN ET AL.

Examiner

Peter T. deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Schantz.

The Schantz reference discloses a dispenser which is capable of dispensing formulations comprising a pressure responsive valve 10 which opens rollingly (see col. 7, lines 18-20), and an actuator/piston (see col. 4, lines 50-55).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isham in view of Runciman/Rios.

The Isham reference discloses a dispenser which is capable of dispensing formulations comprising a material reservoir with a bag 22/101, a valve 102, a supply tube (tube leading from reservoir 101 to valve 102), and a human/machine interface (alarm 115 which is designed to communicate with humans and is thus construed as an HMI), but does not disclose that the material reservoir is a cylinder (instead it is a box) or that the HMI/alarm controls the valve. However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute a cylinder as, for example, taught by the Runciman or Rios references for the box of the Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material reservoirs with bags would work equally well in the Isham device. Regarding the HMI/alarm 115 controlling the valve, the Isham reference discloses that the HMI/alarm 115 shuts down the system based on certain monitored conditions (see Isham, column 12, lines 20-25). Figure 3 of Isham shows schematic lines connecting the HMI/alarm to carbon dioxide tank 118, flow line 120, cooling tank 122, bottle washer tank 132, pumps 102, 126, and 134, and the valve 102. Furthermore, the Isham reference discloses that the HMI/alarm 115 monitors the pressure or temperature in the various tanks and lines (see Isham col 12, lines 11-17 and 35-38), but remains silent as to both the function of the schematic lines from the HMI/alarm 115 to the pumps and the valve as well as how the HMI/alarm 115 functions to shut down the system. However, it would have been obvious for the

HMI/alarm 115 to perform the disclosed shutting down of the system by shutting off the aforementioned pumps and valves (if not already) wherein so doing appears to be the most obvious method to do so and is implied by the specification and Figures of Isham. Regarding claim 3, the Isham formulation dispenser further comprises an alternate material reservoir container 22/101. Regarding claim 4, the Isham formulation dispenser further comprises a dispense tube 128. Regarding claim 7, the claimed method is inherently performed during the normal use of the modified Isham device.

Claims 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isham in view of Runciman/Rios and Lansdale.

Regarding claim 2, the Isham reference discloses a dispenser as discussed re: claim 1 supra with the exception that for purposes of this claim the supply tube is construed as element 128 and a valve in the claimed location is not present, and further comprising a plurality of material reservoirs with bags 22/101, but does not disclose that the material reservoirs are all cylinders (instead they are boxes) or that the supply tube leads from all the material reservoirs to a valve. The Isham reference also remains silent as to the details of the dispensing pump 166. However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute cylinders as, for example, taught by the Runciman or Rios references for the boxes of the modified Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material reservoirs with

bags would work equally well in the modified Isham device. Also, attention is directed to Lansdale reference, which discloses a dispensing pump including a valve 49. It would have been obvious to use a dispensing pump with a valve as taught by Lansdale in the modified Isham device wherein so doing would be mere selection of one known dispensing pump of the known types of dispensing pumps within the art and the selection of any of these known dispensing pumps would work equally well in the Isham device.

Regarding claims 5 and 6, the Isham reference discloses a dispenser as discussed re: claims 1 and 4 supra with the exception that for purposes of these claims a dispense tube in the claimed location is not present, and further does not disclose a dispense valve and dispense cylinder with piston in the claimed configuration. The Isham reference also remains silent as to the details of the dispensing pump 166. However, attention is directed to Lansdale reference, which discloses a dispensing pump including a dispense tube 46, dispense valve 49, and dispense cylinder 40 with piston 41. It would have been obvious to use a dispensing pump with a dispense tube, dispense valve, and dispense cylinder as taught by Lansdale in the Isham device wherein so doing would be mere selection of one known dispensing pump of the known types of dispensing pumps within the art and the selection of any of these known dispensing pumps would work equally well in the Isham device.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bond in view of Moran.

The Bond reference discloses material bag assembly comprising a compressible material bag 11 with an opening and a bag spout 27, but does not disclose at least one corner having a delta seal. However, the Moran reference discloses a similar bag including delta seals defined by two corners (23 and 24, see Figure 4) for improved strength of the bag. It would have been obvious to employ delta seal defined by corners on the Bond bag in view of Moran for improved strength of the bag.

Claims 9-11 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katschnig in view of Grunert.

The Katschnig reference discloses a dispenser which is capable of dispensing formulations comprising a material container 48, a sensor 58, a scale 41, a receiving container 100, a "human-machine interface" (microprocessor 47 which is capable of inputs, see col. 9, last full paragraph), and an actuated injector valve 45, but remains silent as to the details of the actuated injector valve. However, the Grunert reference discloses an actuated injector valve including a pressure responsive valve 16 that opens rollingly at flex region 39 (see Figure 2), such design minimizing the noise of the valve as it is actuated (see col. 5, lines 46-54). It would have been obvious to employ a pressure responsive valve as taught by Grunert that opens rollingly in the actuated injector valve of the Katschnig dispenser for minimization of valve noise as it is actuated.

Claims 12, 13, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katschnig in view of Grunert as applied to claims 9, 14, and 16 above, and further in view of Bull.

The Katschnig reference discloses a dispenser as discussed supra, but remains silent as to how the disinfectant is caused to flow from container 48. However, the Bull reference discloses a container wherein product is caused to flow from the container via pressure on material bag 75 via piston/actuator 73 for simple, efficient dispensing of the product. It would have been obvious to modify the container 48 of the Katschnig device to employ a material bag pressurized via a piston/actuator in view of Bull for simple, efficient dispensing of the disinfectant.

Response to Arguments

Applicant's arguments filed 10/19/05 have been fully considered but they are not persuasive. Applicant first argues that the cylinders of Runciman and Rios are too complex to combine with the Isham system. However, the Examiner is relying solely on the teaching of the utility of a bag within a cylinder in those references, not the devices taken as a whole. Applicant next argues that a human/machine interface is not taught by Isham. However, as discussed supra, the Examiner construes alarm 115 to be a human/machine interface. Applicant next argues that there is no prima facie obviousness to combine Lansdale with Isham; however, it is the Examiner's position that Isham's lack of specificity of the dispensing pump combined with Lansdale's teachings of specific features of dispensing pumps creates a prima facie case of obviousness to combine in this case. Applicant next argues that due to the continuous peripheral heat seal of the Bond bag, reinforcement of the corners of the Bond bag would not strengthen and could actually weaken the bag. However, the Examiner's

position remains that the prima facie teaching of Moran is that such reinforcement of the corners should strengthen the Bond bag at least at the corners.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Vonnegut reference discloses a sensor 18 sensing flow from a pressure responsive valve 11. The Domanik reference discloses sensing of flow from a nozzle. The King reference discloses a piston 14 forcing material from a bag 22 and through a pressure responsive valve 66.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Peter J. Van